



MILPITAS PLANNING COMMISSION STAFF REPORT

June 23, 2021

APPLICATION:

NEW MULTI-FAMILY AFFORDABLE HOUSING DEVELOPMENT – 308 SANGO COURT – SD19-0014, DB19-0001, TR19-0029, AND EA19-0007: A Site Development Permit, Density Bonus Permit, Tree Removal Permit, and Environmental Assessment to allow the demolition of an existing industrial building, removal of three protected trees, and development of a six-story, 100% affordable housing project with up to 85 multi-family residential units, a ground-floor parking garage with up to 48 vehicle spaces, and approximately 20,788 square feet of public and private open and recreation space, on a 1.11-acre parcel located at 308 Sango Court, in the Transit Area Specific Plan (TASP) planning area.

RECOMMENDATION:

Staff recommends that the Planning Commission receive the project presentation, open and close the public hearing, consider the exemptions in accordance with CEQA, and adopt Resolution No. 21-014 recommending that the City Council approve Site Development Permit No. SD19-0014, Density Bonus Permit No. DB19-0001, Tree Removal Permit No. TR19-0029, and Environmental Assessment No. EA19-0007 to allow the demolition of an existing industrial building, removal of three protected trees, and development of a six-story, 100% affordable housing project with up to 85 multi-family residential units, a ground-floor parking garage with up to 48 vehicle spaces, and approximately 20,788 square feet of public and private open and recreation space, subject to the Conditions of Approval.

PROJECT LOCATION:

Address/APN:

308 Sango Court (APN: 086-36-036)

Area of City:

Transit Area Specific Plan (TASP): Montague Corridor Subdistrict

PEOPLE:

Project Applicant

Mike Kelley, Pacific West Communities, Inc.

Property Owner:

Robert Lawson

Project Planner:

Michael Fossati, Senior Planner

LAND USE:

General Plan Designation:

Milpitas Metro Specific Plan (MMSP)

Specific Plan Designation:

Boulevard Very High-Density Mixed-Use (MXD3)

Zoning District:

Very High-Density Mixed-Use (MXD3)

Site Area: 1.11 acres

ENVIRONMENTAL: This Project is categorically exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15194 (Affordable Housing Exemption) and as a separate and independent basis, and CEQA Guidelines Section 15168(c) (Program EIR), consistent with the Addendum to the Transit Area Specific Plan (TASP) Environmental Impact Report (FEIR), June 2008 (SCH#2006032091) approved by the City Council on November 17, 2015 (Resolution No. 8509)

EXECUTIVE SUMMARY

The applicant, Pacific West Communities, requests a Site Development Permit, Density Bonus Permit, Tree Removal Permit, and Environmental Assessment to demolish an existing two-story, 14,800-square foot industrial office/warehouse building, remove three protected trees, and develop a 64,356-square foot, podium-style apartment building, up to 77 feet (six stories) in height, with associated site improvements, on a 1.11-acre site located at 308 Sango Court in the Montague Corridor Subdistrict of the Transit Area Specific Plan (TASP) area.

The project proposes a total of 85 multi-family residential units, including 35 one-bedroom, 27 two-bedroom, and 23 three-bedroom units. The project will be 100% affordable, with 34 units (40%) reserved for moderate-income households and 51 units (60%) units reserved for low-income households. The residential units are located in a five-story tower over a one-story garage with 48 vehicle parking spaces. A shared central courtyard is located on the first level above the podium. The project also includes a 1,473-square foot lobby, a 615-square foot fitness center, and a 765-square foot resident lounge on the ground floor.

The proposed project requires approval of three entitlements, as follows:

1. Site Development Permit SD19-0014: To allow the development of a five-story, podium-style apartment building over a one-story parking garage, with up to 85 multi-family residential units (100% affordable), parking for up to 48 vehicles, and approximately 20,788 square feet of landscaped public and private open and recreation space on the 1.11-acre site; and
2. Density Bonus Permit DB19-0001: To allow a 27% density increase (18 units) over the maximum 60 du/acre density allowed in the MXD3 Zoning District and consideration of certain specific concessions, waivers, and exceptions requested by the applicant; and
3. Tree Removal Permit TR199-0029: To remove three protected trees; and
4. Environmental Assessment EA19-0007: To review and verify an exemption from further environmental review under CEQA.

Staff reviewed the entitlement applications listed above and found them to be in compliance with the policies, standards, and processes outlined in the City of Milpitas 2040 General Plan, Transit Area Specific Plan (Milpitas Metro Specific Plan), Zoning Ordinance, Milpitas Municipal Code (MMC), and the State Density Bonus Law. The balance of this report provides specific details regarding each of the requested entitlements.

Staff recommends that the Planning Commission open and close the public hearing, consider the exemptions in accordance with CEQA and adopt Resolution No. 21-014, recommending approval of the Project to the Milpitas City Council, subject to the conditions of approval included as Exhibit 1 within the above-referenced resolution.

BACKGROUND

The project site is currently occupied by a 14,800-square foot industrial building with two floors of office space at the front and approximately 25,000 square feet of paved surface parking and storage areas on the west side and rear of the building. The site was originally developed in the 1980s as part of the Sango Court industrial park.

In June 2008, the City of Milpitas adopted the Transit Area Specific Plan (TASP) to facilitate the transformation of older industrial properties surrounding the future Milpitas Transit Center into high intensity, transit-oriented, mixed-use neighborhoods. The TASP designated the properties on Sango Court for very high density mixed-use and transit-oriented residential development, and in 2018, the City approved a 102-unit 100% affordable housing project at 355 Sango Court. The City has recently purchased other properties in the area, including 1700 Sango, for future public park and roadway improvements. The proposed 85-unit 100% affordable housing project at 308 Sango would continue the ongoing transformation of this area consistent with the TASP vision.

In March 2020, the City initiated an update to the TASP and rebranded this effort as the Milpitas Metro Specific Plan. The update Plan will shape the continued transformation of neighborhoods surrounding the Milpitas Transit Center, which opened in June 2020, to create a vibrant transit-oriented community with a mix of housing, retail, entertainment, and employment uses and a safe and attractive network of parks and trails. The proposed project is consistent with this vision.

PROJECT DESCRIPTION

Overview

The applicant requests a Site Development Permit, Density Bonus Permit, Tree Removal Permit, and Environmental Assessment to demolish an existing two-story, 14,800-square foot industrial office/warehouse building, remove three protected trees, and develop an 85-unit multi-family residential apartment building at 308 Sango Court. The residential units will occupy a five-story tower surrounding a central courtyard over a one-story, ground-floor parking garage. There are 35 one-bedroom, 27 two-bedroom, and 23 three-bedroom units. The second floor has 17 dwelling units (seven one-bedroom units, seven two-bedroom units, and three three-bedroom units), and the remaining floors (three through six) each have 17 dwelling units (seven one-bedroom units, five two-bedroom units, and five three-bedroom units). The units will range in size from 563 to 1,073 square feet.

The project will be 100% affordable with 34 units (40%) reserved for moderate-income households and 51 units (60%) units reserved for low-income households. The State Density Bonus Law (Gov. Code § 65915 et seq.) provides a density bonus, a reduction in required parking ratios, concessions and waivers from development standards, and discretionary incentives in return for the affordable housing component of this project. The analysis section of this staff report includes a full discussion of the State Density Bonus provisions related to this project.

The proposed project provides a total of 48 parking spaces, including four van-accessible spaces, eight electric vehicle (EV) resident spaces, 17 EV-capable resident spaces, 15 compact spaces, two guest spaces, one space for prospective new tenants, and one space for mail truck and deliveries. The parking provided reflects a significantly reduced parking requirement for 100% affordable projects located within one-half mile of a quality transit stop, as allowed under the State Density Bonus Law (Gov. Code § 65915 et seq.). The garage also has 30 long-term bicycle parking spaces, with four short-term bicycle parking spaces near the front entrance on Sango Court. In addition to parking, the ground floor of the project includes utility rooms for electrical connections, fire control, and solid waste collection. The ground floor also includes a 1,473-square foot lobby, a 615-square foot fitness center, and a 765-square foot common room for residents. The ceiling height of the one-level podium garage, accessory rooms, and amenity areas is 12 feet, six inches.

The proposed structure will have a maximum height of approximately 77 feet or six stories (at the parapet height). All rooftop mechanical equipment will be screened from view by the parapet walls. The second floor will feature a 4,832-square foot shared central courtyard furnished with raised planters, decorative pavers, shade structure, gas barbeque, picnic table, and an artificial turf activity area. The courtyard will have direct access from the interior of the building and by an exterior stairway from the ground floor.

Location and Context

The Project is located on a 1.11-acre site on the south side of Sango Court. The site is currently occupied by a vacant industrial 14,800-square foot office/warehouse building. Figure 1 shows the location of the proposed project in an aerial image:

Figure 1 – 308 Sango Ct. (Aerial Image)

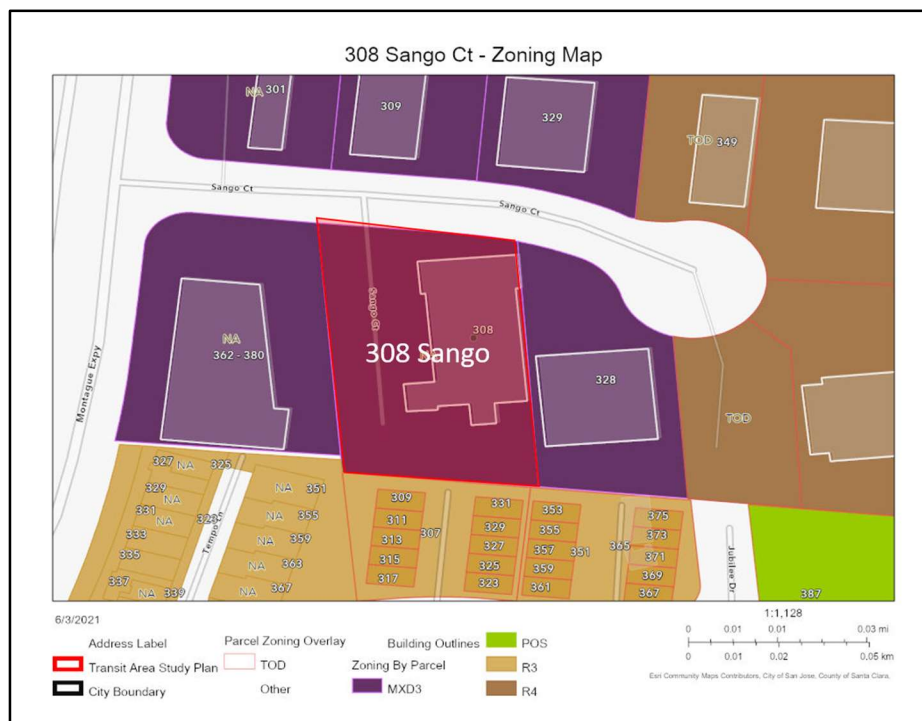


The property is located within the Transit Area Specific Plan (Milpitas Metro Specific Plan) area and zoned Very High-Density Mixed-Use (MXD3). Table 1 summarizes the project site's General Plan land use designation, zoning, and surrounding uses. Figure 2 demonstrates the proposed location in a zoning map:

Table 1: Surrounding Zoning and Land Uses

	General Plan	Zoning	Existing Uses
Subject Site	Milpitas Metro Specific Plan (MMSP)	Very High-Density Mixed-Use (MXD3)	Vacant Light Industrial
North	Milpitas Metro Specific Plan (MMSP)	Very High-Density Mixed-Use (MXD3)	Ark's Baptist Church
South	Milpitas Metro Specific Plan (MMSP)	Multi-family High-Density Residential (R3)	Olson Brother's Body Shop
East	Milpitas Metro Specific Plan (MMSP)	Very High-Density Mixed-Use (MXD3)	"You Luckie Dog" Pet Day Care
West	Milpitas Metro Specific Plan (MMSP)	Very High-Density Mixed-Use (MXD3)	Residential Townhomes

Figure 2 – 308 Sango Ct. (Zoning Map)



PROJECT ANALYSIS

This section will evaluate elements of the proposed project for conformance with the Milpitas 2040 General Plan, the 2008 Transit Area Specific Plan, the Zoning Ordinance and other provisions of the Milpitas Municipal Code, and the State Density Bonus Law.

General Plan Conformance

The General Plan designation for the project site is Milpitas Metro Specific Plan (MMSP), but since City Council has not formally adopted the MMSP, the TASP development standards currently apply. The intent of both the MMSP and TASP standards is to facilitate development of higher intensity, mixed-use neighborhoods near the Milpitas Transit Center and to encourage walking, biking, and the use of alternative modes of transportation.

As proposed, the Project is consistent with the goals, policies, and standards in the City's General Plan, as set forth in Table 2:

Table 2: General Plan Consistency

Policy	Conformance
<i>Policy LU 2-3: Allow densities and intensities which exceed the generally allowed ranges defined by the underlying land use for projects utilizing Density Bonus provisions, including bonuses for senior housing, affordable housing, and for projects within designated overlay districts included in Milpitas Municipal Code Section 12 - Overlay Districts and Standards.</i>	Consistent. The Project takes advantage of the Density Bonus provision, which permits increased densities by incorporating an affordable component in the development. The Project, as proposed, will be 100% affordable and provide up to 85 multi-family residential units for individuals and households with low or moderate incomes, as defined by the State of California and County of Santa Clara.
<i>Policy LU-4-2: Emphasize efforts to reduce regional vehicle miles traveled by supporting land-use patterns and site designs that promote active modes of transportation, including walking, biking, and public transit.</i>	Consistent. The Project is located within proximity to the Milpitas Transit Center and will allow easy access by pedestrians and bicyclists to various modes of travel. The Project proposes a significantly reduced parking standard with only 48 vehicle parking spaces for 85 residential units. Limited parking facilities will encourage walking, biking, and use public transit to access goods and services without using an automobile and directly reduce vehicle miles traveled. The Project includes 34 bicycle parking spaces, further promoting the use of active modes of transportation.

Policy	Conformance
<i>Policy LU 5-3: Ensure new development is consistent with specific height limits established within the City's Zoning Ordinance as applied through the zoning district for all properties within the City.</i>	Consistent. The Project meets the height standards by proposing a six-story building, up to 77 feet in height, in a zoning district that allows up to 12 stories and a maximum height of 150 feet.

Transit Area Specific Plan Conformance

The TASP/MMSP land use designation for the project site is Boulevard Very High-Density Mixed Use. This designation provides for high-density housing, retail, and employment uses within the Montague Expressway corridor. As demonstrated in Table 3, the Project is consistent with applicable TASP/MMSP land use policies.

Table 3: TASP/MMSP Consistency

Policy	Conformance
<i>Policy 3.4: Provide a variety of housing types for different types of households, different income levels, different age groups, and different life-styles.</i>	Consistent. The proposed Project will provide various housing types, including one-, two-, and three-bedroom units for rent to either moderate or low-income individuals or households, consistent with the City's goal of providing housing for various households and income levels.
<i>Policy 3.6: Encourage creativity in high-density residential design. Allow creative housing types, such as live/work lofts.</i>	Consistent. The Project will use modular construction to reduce construction time and costs and will incorporate varied materials and architectural features to create visual interest. The multi-story building provides higher-density development in contrast to surrounding lower-density two, three, and four-story townhomes. On-site amenities will include a central courtyard on the second floor, landscaped open space and recreation areas around the building, and a ground-floor parking garage for vehicles and bicycles.
<i>Policy 3.17: New streets shall be located as generally shown on the Street System Map, Figure 3-2 within the TASP</i>	Consistent. A portion of the Project's TASP fees will contribute to the new Sango Court configuration, designed to replace the cul-de-sac with a local street and connection to Tarob Court.

Policy	Conformance
<i>Policy 3.2: Affordable housing units should be provided with new housing developments. Determine affordable unit requirements on a project-by-project basis, considering the size of the project, the location of the site, and the mix of affordable units in the Midtown Area. Allow housing developments of 12 units or less to pay a fee in lieu of providing affordable units.</i>	Consistent. The Project will be a 100% affordable housing project with up to 85 multi-family residential units. At a minimum, 60 percent of the units will be for low-income individuals or households, while 40 percent will be for moderate-income individuals or households.
<i>Policy 3.3: Affordable housing should be integrated into all residential projects.</i>	Consistent. The Project will be a 100% affordable housing project with up to 85 multi-family residential units reserved for low- and moderate-income individuals or households.

Zoning Conformance

The zoning designation for the project site is Very High-Density Mixed Use (MXD3). As demonstrated in Tables 4 and 5, the Project is consistent with most of the applicable development standards for the MXD3 Zoning District and TASP/MMSP area. For those project elements not in compliance with the MXD3 or TASP/MMSP development standards, the applicant is requesting concessions or waivers in accordance with the affordability provisions of the State Density Bonus Law. A detailed discussion of the standards from which the project deviates and the concessions or waivers requested by the applicant follows Table 5.

Table 4: Development Standards for the MXD3 Zoning District

MXD3	Standard	Conformance
Density	41-60 dwelling units (du) /gross acre (acre)	Compliant: Eligible for Density Bonus up to 80% 77 du/acre
Setbacks		Compliant (with DBP Concession)
Front(min/max)	12-20 ft. from the property line	15 ft.
Right (North) Side	10 ft./ 20 ft. for the portion of building over 60 ft.	21 ft.
Left (South) Side	10 ft./ 20 ft. for the portion of building over 60 ft.	40 ft., four inches
Rear	15 ft. minimum/ 30 ft. for the portion of building over 60 ft.	23 ft., 10 inches (Compliant with Density Bonus Permit - Waiver)
Floor Area Ratio	Maximum FAR: 2.0	Compliant: 0.45 FAR
Commercial Area, Minimum	Not Applicable	No commercial area proposed.
Building Height	Twelve stories or 150 ft.	Compliant: 77 ft.
Private Open Space	Each dwelling unit requires private open space	Compliant (with Density Bonus Waiver) Ten of 85 dwelling units include private open space
Landscaping	All required front and street setback areas shall be landscaped or paved to allow for outdoor seating, display or goods, or street furniture.	Compliant: The front setback area has an entrance and landscaped public plaza with trees and shrubs.

In addition, projects located in the TASP/MMSP area must comply with the additional development and design standards outlined in Table 5:

Table 5: Additional Development Standards Applicable in the TASP/MMSP

	Standard	Conformance
Projections into Required Yards	Porches, stairs, balconies, bay windows, and awning may project up to six feet into required setbacks.	Compliant: A proposed outdoor stairwell encroaches into the right setback by three feet.
Building Orientation and Entrances	Building must face the street; and primary building entrances must be oriented toward the street.	Compliant: Access to the building is via the front of the building, through the public plaza.
Vehicle Parking	122 parking spaces are required per TASP/MMSP development standards.	Compliant (with Density Bonus Concession) 48 parking spaces
Bicycle Parking	28 long- and short-term bicycle parking spaces.	Compliant: 34 long- and short-term bicycle parking spaces.
Parking Structure and Parking Lot Location	Parking must be located so that it is not visible from the street.	Compliant: Parking lot entrance accessible from the side and not visible from the street.
Parking Access and Curb Cuts	Maximum two curb cuts per lot per street frontage	Compliant: One curb cut along frontage proposed.
Park Acreage Requirements	0.14 acres (after payment of TASP/MMSP fee)	Compliant: 0.48 acres proposed, which includes a public plaza, internal courtyard, recreational courts, and fitness facility

Architectural Design

The proposed project will feature modular construction with a contemporary architectural design and color scheme. Variations in colors, materials, and wall planes break up the building massing, and smaller elements such as recessed windows, decorative awnings, and score lines provide visual interest. Project renderings also show a dramatic public art installation near the building entrance.

Figure 3 is a perspective view of the north and east building elevations. A public art piece is proposed at the northeast corner of the building near the lobby entrance and vehicle driveway.

Figure 3 – Proposed Project Looking Southwest from Sango Court



Figure 4 is a perspective view of the west elevation of the proposed building looking northeast into the central courtyard.

Figure 4 –Proposed Project looking Northeast into the Central Courtyard



Tree Removal, Landscaping, and Open / Recreational Space Requirements

The Project includes removal and replacement of three protected trees (three Chinese Tallow) to accommodate construction of the driveway and public frontage improvements. In accordance with the City's Tree Maintenance and Protection Ordinance, the project proposes planting 18 replacement trees (King Palms, Ginkgo Biloba, Dwarf Southern Magnolias, and Queen Palms) in various areas across the site. Other new landscaping around the site will include various shrubs (Japanese Laurel, Creeping Mahonia, and Carolina Laurel Cherry), grasses (Blue Fescue, Purple Muhly, and Dwarf Fountain Grass), and perennials (Cast Iron Plants, Japanese Sago Palm, and African Irises). Artificial turf areas will also be provided as part of the required facilities for onsite stormwater management. The perimeter landscape area includes trees, shrubs, grasses, perennials, a dog park, a picnic area, a lawn area, a basketball court, and two lounge and seating areas, as demonstrated in Figure 5 below.

Figure 5 – Landscape Plan



Parkland and Open Space Requirements

TASP requires all new residential developments to provide 3.5 acres of parkland for every 1,000 persons or payment of fees-in-lieu, as required per MMC Section XI-10-6.04 (G) (*Park and Open Space Requirements for Residential Uses*). Based on the proposed 85 units at the site, the project would be required to provide 0.74 acres of parkland, or the equivalent of approximately \$2,065,162 in in-lieu fees.

All projects in the TASP are required to pay a Transit Area Development Impact Fee (TADIF), and a portion of the TADIF is used for park and recreation purposes within the TASP area. By paying the TADIF, the applicant receives a credit of \$1,682,842, equivalent to 0.60 acres of parkland. The applicant is obligated to either provide an additional 0.14 acres of public or private recreational space or pay the remaining balance of \$382,320 in in-lieu fees.

To satisfy this requirement, the applicant proposes to provide 0.48 acres of on-site public and private recreation space. The Project features multiple open space and recreational amenities, including the shared central courtyard, recreation facilities and picnic area at the rear of the property, and a paseo with benches along the west side of the building. Additionally, the Project would receive credit for the 765-square foot recreational lounge with outdoor patio, 615-square foot communal fitness area, and 10 private balconies with a total of 1,205 square feet. By designing these elements into the project, the parkland requirement is met without additional fees. Table 6 outlines this information below.

Table 6:
Summary of Adherence to Parkland Requirements

308 Sango Court Unit Count	102
308 Sango Court Population Estimate (2.08 persons/unit per TASP)	212 persons
TASP Parkland Requirement	3.5 acres/1,000 people or equivalent fees-in-lieu
Total Parkland Acreage or In-Lieu Fee Required	0.74 acres / \$2,065,162
Amount Satisfied Through TASP Fees (Acreage/Dollars)	0.60 acres / \$1,682,842
Remaining Parkland Acreage or In-Lieu Fee Required	0.14 acres / \$382,320
Private Recreation/Open Space Included in the Project	0.48 acres
Balance of Parkland Acreage or In-Lieu Fee Due	0.00 acres

State Density Bonus Law

To encourage the production of affordable housing, the State Density Bonus Law (Gov. Code § 65915 et seq.) allows developers to receive a density bonus of up to a 50% increase for most projects, depending on the amount of affordable housing provided, and an 80% increase in density for projects that are 100% affordable. The Density Bonus is a state mandate, and any developer who meets the requirements of the state law is entitled to receive the density bonus and other benefits as a matter of right. The City's local Density Bonus Ordinance (MMC Section XI-10-54.15 (F)) mirrors the State requirements.

Based on 100% affordability, with 34 units (40%) reserved for moderate-income households and 51 units (60%) units reserved for low-income households, the proposed project is eligible for a 50% density bonus. The maximum allowable density in the MXD3 Zoning District is 60 du/ac, which would yield 67 units on the subject 1.11-acre parcel. The proposed 85-unit development represents a 27% increase over the maximum allowable density, which is less than the allowable 50% density bonus. Under the State Density Bonus Law, the applicant is entitled to receive the 27% density bonus as a matter of right.

Concessions and Waivers

The State Density Bonus Law and MMC Section XI-10-54.15(F) also allow developers who incorporate affordable units within a residential project to request relief from local development standards in the form of a concessions, waivers, and incentives. Concessions and waivers typically involve a reduction in site development standards or a modification of zoning code or architectural design requirements, such a reduction in setback or maximum building height requirements. Incentives typically involve financial measures intended to achieve identifiable and actual cost reductions for a project.

The City is required to grant concessions or waivers proposed by the developer unless it finds that the proposed concession or waiver would not result in identifiable and actual cost reductions, would cause a public health or safety problem, would cause an environmental problem, would harm historical property, or would be contrary to law. The Density Bonus Law restricts the types of information and reports that a developer is required to provide to the local jurisdiction in order to obtain the requested incentive or concession. The local jurisdiction has the burden of proof in the event it declines to grant a requested concession or waiver.

The number of required concessions is based on the percentage of affordable units in the project. Since the proposed project is 100% affordable (with the acceptance of one manager's unit), with 33 units (40%) reserved for moderate-income households and 51 units (60%) units reserved for low-income households, the applicant qualifies for three concessions. In addition to concessions, the applicant may also request a waivers or reductions of any local development standards that would physically prevent the project from being built at the permitted density and with the granted concessions. Based on 100% affordability, the project is eligible for an unlimited number of waivers from local development standards. The city is not required to waive or reduce development standards that would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law.

In addition to concessions and waivers from development standards, the applicant may also request financial incentives from the City in the form of fee waivers, reductions in dedication requirements, etc. The City is not required to grant these additional incentives but may consider granting these requests to demonstrate support the development of affordable housing.

The following sections describe concessions, waivers, and incentives requested by the applicant for the proposed project at 308 Sango. A letter from the applicant outlining their request for these concessions and waivers will be provided to the Planning Commission prior to the meeting.

Rear Yard Setback

The TASP Development Standards for sites within the MXD3 Zoning District (see TASP Table 5-1) require a minimum rear yard setback of 30 ft. for a multi-story residential project over 60 ft in height. The applicant is requesting a waiver to allow a reduced setback of 23 feet10 inches. Based on the level of affordability, the proposed project qualifies for the requested waiver, which is not discretionary.

Private Open Space

MXD3 zoning standards require each residential unit to have private open space in the form of a patio or balcony. The Project provides private open space for only ten of the 85 residential units, and the applicant has requested a waiver to eliminate the private open space requirement for the other 75 units. To partially compensate for the lack of private open space, the project incorporates over 20,000 square feet of common open space and recreational amenities for residents and their guests. This waiver is not discretionary.

Parking Ratio

The proposed parking garage provides a total of 48 parking spaces, which is significantly fewer than the standard TASP parking requirements of 122 parking spaces. In 2020, the State Density Bonus Law was amended to provide a reduced ratio of 0.5 parking spaces per unit for affordable projects with at least 20% of the units designated for low-income individuals or households and within ½-mile of an accessible major transit stop. A basic parking analysis for the proposed project is provided in Table 7 below. Requesting reduced parking standards does not count as an incentive or concession and is not discretionary.

Under the State Density Bonus Law, the developer may also request additional special parking standards as a concession. The TASP development standards require all vehicle spaces within the MXD3 Zoning District to have standard dimensions (10'x 20'), and the applicant has requested a waiver to allow 33% of the total vehicle spaces within the parking garage to be sized for compact vehicles. Based on the level of affordability, the proposed project qualifies for the requested waiver, which is not discretionary.

Table 7: Parking Requirements (under State Density Bonus Law)

Land Use	Count	Rate	Spaces Required	Spaces Provided	Notes
1 bedroom	35	0.5/unit	18	18	
2 bedroom	27	0.5/unit	14	16	
3 bedroom	23	0.5/unit	12	14	
Guest Parking	N/A		0		Included as part of the total number of parking spaces required under the State Density Bonus Law
Total			44	48	

As noted in the Project Description, the parking garage will include four van-accessible spaces, eight electric vehicle (EV) resident spaces, 17 EV-capable resident spaces, 15 compact spaces, two guest spaces, one space for prospective tenants, and one space for mail truck and deliveries.

Development Fees

Under the State Density Bonus law, the city may consider other financial incentives, such as fee waivers or fee deferral, to support the development of affordable housing through identifiable and actual cost reductions. The applicant has requested a deferral of payment of the Transit Area

Development Impact fees (TADIF) from issuance of Building Permit to issuance of Certificate of Occupancy and a 100% reduction in Public Art fees. The City of Milpitas has adopted policies to offset fees for certain development types, including affordable housing projects. The Project is subject to the following development fees:

- Transit Area Specific Plan Development Impact Fee (TADIF)*
 The TADIF is currently set at \$40,487 per residential unit. Based on approval for the development of 85 units, the estimated TADIF for this project is \$3,441,395. The City has allowed deferred payment of the TASP fees on a limited basis for a handful of other projects, and in this case, the City concedes that deferral of the TADIF would help facilitate the development of a new 100% affordable housing project. This would be considered a financial incentive under the Density Bonus Law.
- Affordable Housing Impact Fee*
 A new development project with over ten residential units must either pay an Affordable Housing Impact Fee or construct affordable units on-site. The project provides 85 affordable rental units on-site and has fulfilled the requirements of the Affordable Housing Ordinance.
- Public Art Fee*
 Private residential developments of 20 or more new dwelling units are required to devote at least one-half of one percent of the Building Development Cost toward the purchase and installation of public art at the project site. As proposed, the Project would cost \$49,000,000 dollars in building development, which would require the applicant to either develop a public art piece valued at \$245,000 or pay that amount into the Public Art Fund. The Developer has requested to waive the Public Art Fee requirement, as permitted by Milpitas Municipal Code Section XI-10-14.03 (E). Staff supports the waiving of the Public Art Fee, because the savings would result in actual and identifiable cost savings, which are savings necessary to provide a 100% affordable housing development. The Developer proposes a Public Art installation but requests that the art piece not to exceed a value of \$10,000. A proposed public art piece is identified in the project plans.

Summary of Concessions, Waivers, and Incentives

Table 8 demonstrates the concessions, waivers, and incentives proposed for the Project.

Table 8: Density Bonus – Concessions and Waivers

Type of Modification	Standard	Applicant Request	Justification	Discretion
<i>Density Bonus</i>	60 du/ac	17 percent bonus	Allows a larger number of affordable units to be developed (77 du/ac)	Allowed under the State Density Bonus Law. No discretion by City.

Type of Modification	Standard	Applicant Request	Justification	Discretion
<i>Concession</i>	Private open space required for each unit	Provide private patio or balcony for ten of the 85 units.	Project provides common open space, including a central courtyard, recreational amenities, and a landscaped paseo with outdoor seating.	Allowed under State Density Bonus Law. No discretion by City.
<i>Parking Waiver</i>	122 spaces (1.44 spaces/unit)	48 spaces (0.56 spaces/unit)	Parking reduction to 48 parking spaces reduces overall project costs; proximity to Milpitas Transit Center reduces the need for a vehicle.	Allowed under State Density Bonus Law. No discretion by City.
<i>Waiver</i>	30-foot rear setback required for a portion of building above 60 feet in height.	Provide a 23-foot-10-inch rear setback	The proposed building modular construction to reduce costs. Each module has a pre-determined length and width with no opportunity to customize.	Allowed under State Density Bonus Law. No discretion by City.
<i>Waiver</i>	Compact parking prohibited in the MXD3 Zoning District	Provide 16 compact parking spaces (33 percent of vehicle spaces in the parking garage are compact spaces	Compact spaces facilitate efficient parking and site design	Allowed under State Density Bonus Law. No discretion by City.
<i>TASP Fee</i>	Payment of TASP impact fees at issuance of Building Permit	Payment of TASP Fees deferred to issuance of Certificate of Occupancy	Deferral of TASP fees will reduce costs by shifting interest from short-term construction loan to longer-term financing	TASP Impact Fee deferral at the discretion of the City Council

Type of Modification	Standard	Applicant Request	Justification	Discretion
<i>Public Art Fee</i>	Install public art on-site or pay in-lieu fee (½ of one percent of building development cost)	Waive Public Art requirement or allow on-site art installation of lesser value that ½ of one percent	Reduced contribution to public art will reduce overall costs of 100% affordable housing project	Public Art Fee waiver at the discretion of City Council.

The proposed concessions and waivers would result in actual and identifiable cost savings to the developer, and these savings are necessary to achieve the level of affordability proposed. None of the concessions or waivers would result in any specific, adverse impacts to public health, safety, the physical environment, or historical resources, so the City has no justification to deny the requested concessions and waivers.

Off-Site Improvements

The TASP/MMSP calls for narrowing Sango Court and replacing the existing cul-de-sac with a local street that connects to Tarob Court. These future street improvements will require the installation of new curb and gutter for all properties with frontage on Sango Court. The City would bear a portion of the cost, with the remaining cost paid by property owners facing Sango Court. The following condition has been placed into the resolution:

- The Permittee shall pay an in-lieu fee equivalent to 50% of the construction costs of narrow Sango Court along their property frontage per the Transit Area Specific Plan (TASP) local street standard. This shall include, but not be limited to, all costs associated with the removal and/or modification of existing frontage improvements for the project site, the installation of roadway, sidewalk, decorative parking stalls, streetlights, street furniture, and landscaping to TASP standards, and the relocation of utilities and appurtenances. The in-lieu fee shall be based upon the project engineer's cost estimate subject to City Engineer's review and approval. Once the updated TASP (Milpitas Metro Plan) and associated Transit Area Development Impact Fee (TADIF) are approved by the City Council, including funding for a project to narrow Sango Court per TASP local street standards, the Permittee shall pay the revised TADIF instead of the in-lieu fee and will receive a credit towards their TADIF if the in-lieu fee for roadway narrowing was previously paid.

FINDINGS FOR APPROVAL OR DENIAL

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

Site Development Permit (Section XI-10-57.03 (F))

To approve the Site Development Permit, the following findings must be made pursuant to Milpitas Municipal Code Section XI-10-57.03(F):

1. *The layout of the site and design of the proposed buildings, structures, and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The Project's site layout and design are consistent with the Montague Corridor Subdistrict of the TASP/MMSP design standards and MXD3 development standards, as demonstrated and outlined in Tables 3, 4, and 5. Pursuant to the State Density Bonus Law, the applicant has requested waivers for project components that are not consistent with any of the standards.

2. *The project is consistent with the Milpitas Zoning Ordinance.*

The proposed Project is consistent with the Milpitas Zoning Ordinance, as demonstrated in Table 4. The proposed multi-family residential building is a permitted use in the MXD3 Very High-Density Mixed-Use Zoning District, and the project design conforms to the site and development standards of the MXD3 zone.

The Project also conforms to MMC Section XI-10-54.015 (Density Bonus for Affordable Housing Developments) and XI-10-57.05 (Density Bonus Permits). Where exceptions from the MXD3 standards are needed, the applicant has requested concessions and waivers pursuant to the State Density Bonus Law (Gov. Code § 65915 et seq.). The requested concessions and waivers will support the development of affordable housing on a site where it would not otherwise be possible through a strict application of the specified standard.

3. *The project is consistent with the Milpitas General Plan.*

The proposed Project is consistent with the Milpitas General Plan, as demonstrated and outlined in Table 2.

4. *The project is consistent with the Transit Area Specific Plan.*

The proposed Project is consistent with the applicable policies and design guidelines of the TASP/MMSP, as demonstrated and outlined in Tables 3 and 5. Where exceptions from TASP/MMSP development standards are needed, the applicant has requested concessions and waivers pursuant to the State Density Bonus Law (Gov. Code § 65915 et seq.). Approval of the requested concessions and waivers will support the development of affordable housing on a site where it would not otherwise be possible through a strict application of the specified standard.

Density Bonus (Section XI-10.54.15(D)(F))

The City must grant the requested incentives/concessions unless the City can make either of the following findings in writing and based on substantial evidence:

- a. The concession is not required in order to provide for affordable housing costs as defined in State Health and Safety Section 50052.2 or for rents for the affordable units pursuant to Section XI-10-54.15(D)(5), Standards, of Chapter 10 (Zoning) of the Milpitas Municipal Code.*
- b. The concession would have a specific adverse impact as defined in State Government Code Section 65589.5(d) (2) upon the public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.*

According to MMC Section XI-10.54.15(F)(6), the City must grant waivers of development standards if the applicant demonstrates the waiver is necessary to make the affordable housing units economically feasible and can only deny such waiver request unless the City makes the above findings, specified in MMC Section XI-10.54.15(F)(3).

If the City cannot make the findings to deny, the proposed incentives/concessions must be granted, based on the requirements of the City's Municipal Code and California Government Code Sections 65915.

The proposed concessions and waivers would result in actual and identifiable cost savings, and these savings are necessary to provide the level of affordability proposed. None of the concessions or waivers would result in any specific, adverse impacts to public health, safety, the physical environment, or historical resources, so the City has no justification to deny the requested concessions and waivers.

ENVIRONMENTAL REVIEW

The City conducted an environmental assessment (in the form of a memorandum, dated June 7, 2021) for the proposed Project in accordance with the California Environmental Quality Act (CEQA). The memorandum supports the finding that the proposed 308 Sango Court Project is exempt from further environmental review pursuant to CEQA Guidelines Section 15194 (Affordable Housing) as the Project scope is consistent with CEQA Guidelines Section 15192 (Threshold Requirements for Exemptions For Agricultural Housing, Affordable Housing, and Residential Infill Projects) necessary to qualify for such an exception.

On a separate and independent basis, the project is exempt from further environmental review under CEQA pursuant to CEQA Guidelines Section 15168(c) (Program EIR). The memorandum acknowledging the entitlements and consistency with CEQA Guidelines Section 15194 is attached as Exhibit A of the resolution.

PUBLIC COMMENT/OUTREACH

Staff provided public notice of the application in accordance with City and State public noticing requirements. At the time of publishing this report, there have been no public comments received. A notice was published in the Milpitas Post on June 11, 2021. In addition, notices were sent to all owners and occupants within 300 feet of the project site. A public notice was also posted at the project site, on the City's Website, www.ci.milpitas.ca.gov, and City Hall.

RECOMMENDATION

STAFF RECOMMEND THAT the Planning Commission:

1. Open and Close the Public Hearing;
2. Consider the exemptions in accordance with CEQA; and
3. Adopt Resolution No. 21-014 recommending to the City Council approval of Site Development Permit SD19-0014, Density Bonus Permit DB19-0001, Tree Removal Permit TR19-0029, and Environmental Assessment (EA19-0007), subject to findings and Conditions of Approval.

ATTACHMENTS

A: Resolution 21-014 with Conditions of Approval and CEQA Memoreandum/Addendum

B: Project Plans

C: Applicant Letter Requesting Concessions and Waivers Under the State Density Bonus Law (to be provided prior to the 6/23/21 Planning Commission Meeting)